

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

In re:	)	
	)	
SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:23-CV-00159
	)	
GREEN UNITED, LLC a Utah	)	
limited liability	)	
company, et al,	)	
	)	
Defendants.	)	
	)	
_____	)	

BEFORE THE HONORABLE BRUCE S. JENKINS

September 8, 2023

Motion to Dismiss for Failure to State a Claim

**Appearances of Counsel:**

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**Court Reporter:**

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1 THE COURT: Anybody else?

2 MR. WELSH: Your Honor, very, very briefly. And  
3 I appreciate it. Just to respond quickly to those comments.

11:57:44

4 First, for *McGill*, and that statement within it,  
5 I encourage the court to read the aspect of the portion of  
6 the patents where that comes from and which is explaining in  
7 dicta what the standard is in rejecting those and looking at  
8 economic reality of the transaction.

11:58:02

9 Every -- the only cases that they -- that  
10 opposing counsel can point to in which an investment  
11 contract was dismissed at a pleading stage is for commercial  
12 loans. Across the board in all other cases and all types of  
13 other schemes from the District of Utah, District of  
14 Colorado throughout the Tenth Circuit have read that to mean  
15 that economic reality of the transaction. That is what  
16 matters here. With that, I will rest, Your Honor.

11:58:20

17 THE COURT: In reference to Mr. Thurston, counsel  
18 has somewhat clarified the nature of the fraud action  
19 against Mr. Thurston. I think the rule requires to be, in  
20 reference to Mr. Thurston, to be explicit. If you're  
21 relying upon some other form of fraud, you in turn need to  
22 be explicit.

11:59:00

23 I'll grant the motion to dismiss, with leave to  
24 amend, Mr. Thurston's, that is, the SEC's claim against  
25 Mr. Thurston in reference to fraud, but just in reference to

11:59:31

1 fraud. Whether it's stated expressly or indirectly, that  
2 needs to be clarified with some degree of care.

3 As to the remaining motions, I'm going to reserve  
4 on those. It's an interesting case, but I'm going to place  
12:00:05 5 a burden on counsel. I want both the moving parties, in a  
6 couple of weeks, to file with the court their explanation of  
7 what a Green Box is, and their explanation of what's being  
8 sold including not just the machinery, but if something else  
9 is being sold, I want you to tell me what it is. And if  
12:00:50 10 there are separate -- is there are separate software,  
11 explain to me what software that you're talking about and  
12 give me an example.

13 And I'll place that burden initially on the  
14 defendants. If you can get that done in a couple of weeks  
12:01:25 15 and then I'm interested in the United States telling me what  
16 was sold. Describe for me what the Green Box sale embraced  
17 and whether it did anything other than the machine. And if  
18 so, tell me explicitly what it is and tell me their version  
19 of what their software is and what I get, if I'm a  
12:02:06 20 purchaser, when I buy from the defendant what it is that I  
21 get.

22 And if defendants will respond -- if the  
23 defendants would get to me -- get the material to me by not  
24 later than the 25th of September, and let's have the United  
12:02:53 25 States respond by Friday the 13th of October I would

1 appreciate that. And if it is the kind of thing where we  
2 need to set it down, we will in the regular course. But I'm  
3 eager to be educated in the -- in the esoteric area that  
4 people are talking about. I'm going to try to make it as  
12:03:32 5 simple and as direct and as understandable as possible.

6 So good luck. I'll reserve on the matter until I  
7 get those and we'll take a look.

8 MR. GANNON: Your Honor --

9 THE COURT: Appreciate your help. Thank you very  
12:03:50 10 much.

11 MR. GANNON: Thank you, Your Honor.

12 THE COURT: You may be excused unless there is  
13 anything else to worry about.

14 MR. GANNON: No, sir.

12:03:57 15 THE COURT: You may be excused. I was going to  
16 ask counsel for the moving party, where I have granted the  
17 fraud motion, if you will prepare and submit a suggested  
18 form of order within 10 days.

19 MR. GANNON: Yes, Your Honor, we will.

12:04:17 20 THE COURT: I would appreciate that. Run it by  
21 counsel.

22 (Court adjourned at 12:04 p.m.)  
23  
24  
25

**REPORTER'S CERTIFICATE**

I, Laura W. Robinson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public within and for the County of Salt Lake, State of Utah, do hereby certify:

That the foregoing proceedings were taken before me at the time and place set forth herein and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

In witness whereof I have subscribed my name this 12th day of September, 2023.

**Laura W. Robinson**

Laura W. Robinson

RPR, FCRR, CSR, CP